

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 MARVIN K. LOCKE,
12 CDCR #T-74574,

13 Plaintiff,

14 vs.

15 JANE DOE 1, Registered Nurse;
16 JANE DOE 2, Registered Nurse;
17 GEORGE A. NEOTTIE, Warden;
18 MATTHEW CATE, Director,

19 Defendants.

Civil No. 11-0734 JAH (PCL)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

20 Plaintiff, currently incarcerated at Richard J. Donovan Correctional Facility in San Diego,
21 California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C.
22 § 1983. Plaintiff has neither prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to
23 commence a civil action, nor filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to
24 28 U.S.C. § 1915(a).

25 **I. Failure to Pay Filing Fee or Request IFP Status**

26 All parties instituting any civil action, suit or proceeding in any district court of the
27 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*
28 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only

1 if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*
 2 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th
 3 Cir. 1999).

4 Because Plaintiff has not prepaid the \$350 filing fee nor submitted a Motion to Proceed
 5 IFP, this civil action cannot proceed. *Id.*; 28 U.S.C. § 1914(a).

6 **II. Conclusion and Order**

7 For the reasons set forth above, the Court hereby:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

10 (2) **GRANTS** Plaintiff forty five (45) days leave from the date this Order is filed to:
 11 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 12 IFP which includes a certified copy of his trust account statement for the 6-month period
 13 preceding the filing of the Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).¹

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
 15 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 16 *Pauperis*." If Plaintiff fails to prepay the \$350 civil filing fee or complete and submit the
 17 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 18 prejudice and without further Order of the Court.

19 **IT IS SO ORDERED.**

20
 21 DATED: April 20, 2011

22 
 23 HON. JOHN A. HOUSTON
 24 United States District Judge

25
 26 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 27 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 28 screened and may be dismissed sua sponte pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C.
 § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28
 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an *in forma pauperis*
 complaint that fails to state a claim); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
 (discussing similar screening procedure required by 28 U.S.C. § 1915A(b)).